



FAITH JOHNSON
CRIMINAL DISTRICT ATTORNEY
DALLAS COUNTY, TEXAS
APPELLATE DIVISION

November 16, 2018

MuckRock News
ATTN: CJ Ciaramella
DEPT MR 59476
411A Highland Ave.
Somerville, MA 02144-2516

Re: Public Information Act request seeking information from post-conviction review of the State's prosecution file styled *The State of Texas v. Gary J. Walker*, cause number F92-02704.

Dear Mr. Ciaramella:

Please be advised that the Dallas County District Attorney's Office has received OR2018-28394 from the Attorney General. In accordance with the Attorney General's determination, this Office will be withholding all information responsive to your request. I have enclosed a copy of OR2018-28394 from the Attorney General.

Sincerely,

A handwritten signature in black ink, appearing to read "Ricardo Vela, Jr.", is written over a horizontal line.

Ricardo Vela, Jr.
Assistant District Attorney
Appellate Division
Dallas County District Attorney's Office
Frank Crowley Courts Building
133 N. Riverfront Blvd., LB19
Dallas, Texas 75207-4399
214-653-3625 (Phone)
214-653-3643 (Fax)

Enclosure



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 9, 2018

Mr. Ricardo Vela, Jr.
Assistant District Attorney
Dallas County
133 North Riverfront Boulevard, LB-19
Dallas, Texas 75207-4399

OR2018-28394

Dear Mr. Vela:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 737212.

The Dallas County District Attorney's Office (the "district attorney's office") received a request for a specified confession and witness statements or interviews pertaining to a specified case involving a named individual.¹ The district attorney's office claims the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions the district attorney's office claims and reviewed the submitted information.

Section 552.103 of the Government Code provides in relevant part as follows:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

¹The district attorney's office states it sought and received clarification of the information requested. See Gov't Code § 552.222 (providing if request for information is unclear, governmental body may ask requestor to clarify request); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010) (holding that when a governmental entity, acting in good faith, requests clarification or narrowing of an unclear or overbroad request for information, the ten-day period to request an attorney general ruling is measured from the date the request is clarified or narrowed).

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). A governmental body has the burden of providing relevant facts and documents to show section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing (1) litigation was pending or reasonably anticipated on the date the governmental body received the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, orig. proceeding); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). A governmental body must meet both prongs of this test for information to be excepted under section 552.103(a). *See* ORD 551.

To establish litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *See* Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party. *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). In addition, this office has concluded litigation was reasonably anticipated when the potential opposing party hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, or when an individual threatened to sue on several occasions and hired an attorney. *See* Open Records Decision Nos. 346 (1982), 288 (1981). On the other hand, this office has determined if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Further, the fact a potential opposing party has hired an attorney who makes a request for information does not establish litigation is reasonably anticipated. *See* Open Records Decision No. 361 (1983).

The district attorney's office states, and provides documentation showing, it has been in contact with the appellate and writ counsels of the individual at issue in the request. The district attorney's office also states it "anticipates a writ application to be filed in Criminal District Court No. 1 in Dallas County." The district attorney's office informs us the submitted information was "obtained during a post-conviction investigation conducted by [the district attorney's office's Conviction Integrity Unit ("CIU")] in anticipation of and in preparation for the filing of an application for an 11.07 writ of habeas corpus." Based on the district attorney's office's representations and our review, we find the district attorney's office reasonably anticipated litigation related to the matter at issue. We further find the information at issue is related to the anticipated litigation for purposes of section 552.103.

Therefore, the district attorney's office may withhold the submitted information under section 552.103 of the Government Code.²

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to all parties to the pending or anticipated litigation is not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Gerald A. Arismendez
Assistant Attorney General
Open Records Division

GAA/gw

Ref: ID# 737212

Enc. Submitted documents

c: Requestor
(w/o enclosures)

²As our ruling is dispositive, we need not address the district attorney's office's remaining arguments against disclosure of the submitted information.